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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,956

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Hanka Tietschert

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STITES & HARBISON PLLC
1199 NORTH FAIRFAX STREET
SUITE 900
ALEXANDRIA, VA 22314

EXAMINER

NEWAY, BLAINE GIRMA

ART UNIT

PAPER NUMBER

4133

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,956	Applicant(s) TIETSCHERT, HANKA	
	Examiner BLAINE G. NEWAY	Art Unit 4133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) 6,7,11and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to application filed on April 07, 2006, in which claims 1-13 are presented for examination.

Status of Claims

Claims 1-13 are pending of which claims 1 and 12 are in independent form.

Claim Objections

1. Claims 6 and 7 are objected to because of the following informalities: The term "said one or more protrusion" is improper. The Examiner notes that "said one or more protrusions" should be changed to "said at least one protrusion". Appropriate correction is required.
2. Claim 11 is objected to because of the following informalities: The term "when dependent on claim 9" is improper. The Examiner suggests removing the term from the claim. Appropriate correction is required.
3. Claim 12 is objected to because of the following informalities: It is unclear whether the term "characterized" refers to the package or the front surface. For examining purposes the Examiner will assume that the Applicant refers to the package. Examiner suggests changing the term "characterized" to "further comprising". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 2 and 7, recite "said agricultural products." There is insufficient antecedent basis for this limitation in the claims.
6. Claim 11 recites the limitation "said opening" in the last line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Steffann (US 6,488,152).

Regarding claim 12, Steffann discloses a package for receiving frangible products such as eggs, having a bottom part (2) with an upper rim portion extending

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outwards and non-planar side surfaces so as to match at least partially the outer contours of the products to be packed (figure 1). The package also has a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3). The bottom part (2) is connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3). The front surface (4) extends down from the edge (13) and overlaps the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its closed position (figures 1 and 3). The bottom part (2) adjacent to the upper rim portion is provided with at least one outwardly extending protrusion (15) for locking engagement with co-operating means (14) provided on the cover part (3) (figures 1 and 2). The hinge (9) is positioned above the level of the upper rim portion of the bottom part (2) (figure 3).

Regarding claim 13, Steffann discloses a package comprising a co-operating means (14) on the cover part (3) that is one or more openings in the front surface (4) of the cover part (3) (figures 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7, 9, 10 and 11 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Steffann (US 6,488,152) in view of Bessett (US 3,531,039)

Regarding claim 1, Steffann discloses a package for receiving frangible products such as eggs, having a bottom part (2) with an upper rim portion extending outwards and non-planar side surfaces so as to match at least partially the outer contours of the products to be packed (figure 1). The package also has a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3). The bottom part (2) is connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3). The front surface (4) extends down from the edge (13) and overlaps the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its closed position (figures 1 and 3). When the package is in the closed position, the hinge (9) is positioned above the level of the upper rim portion of the bottom part (2) (figure 3). For locking mechanism, Steffann discloses a package provided with retainment means comprising one or more openings (14) in the front side (4) of the cover part (3) and co-operating retainment projections (15) on the side surface of the bottom part (2) opposite to the hinge (9) (column 2 lines 45-48 and figure 2).

However, Steffann does not disclose at least one inwardly extending protrusion for locking engagement with the upper rim portion of the bottom part (2) when the package is being closed.

Bessett teaches a package i.e. egg carton with a cover part provided with at least one inwardly extending protrusion (37) for locking engagement with upper rim portion (23) of the bottom part when the package is being closed (column 3 lines 29-38 and figure 1).

It would have been obvious to one of ordinary skill in the art to substitute a locking mechanism, as for example, taught by Bessett, for the locking mechanism of Steffann wherein so doing would amount to mere substitution of one functionally equivalent locking mechanism for another within the same art and the selection of any of these locking mechanisms would work equally well in the claimed device.

Regarding claim 2, Steffann discloses a package with a bottom part (2) provided with a pattern of pockets (17) for accommodating the eggs (figure 8).

Regarding claim 3, Steffann discloses the package as being a molded product (column 5 lines 12-13). The examiner also notes that this is a product-by-process claim.

Regarding claim 4, Steffann discloses the package molded as one piece (column 5 lines 14-15). The examiner also notes that this is a product-by-process claim.

Regarding claim 5, Steffann discloses a package made of molded pulp (column 5 lines 16-17). The examiner also notes that this is a product-by-process claim.

Regarding claim 6, Steffann teaches the cover part on the front side provided with an edge portion (13). The protrusions (37) of Bessett will be provided substantially adjacent to the edge portion (13) because the protrusions are engaging the upper rim portion of the package.

Regarding claim 7, Bessett teaches locking engagement with flange-like upper rim portions between adjacent pockets.

Regarding claim 9, Bessett teaches a package with a flange like upper rim portion (23) of the bottom part further provided with outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claim 10, Bessett teaches a package with a bottom part provided with outwardly extending retainment flaps (24a and e) placed for engagement with the engagement surface of the protrusions (37) of the cover part (column 3 lines 29-38 and figure 1). By doing so the locking engagement of the protrusions with the upper rim portion of the bottom part takes place at the flange like upper rim portion, more particularly at the outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claim 11, Bessett teaches a package with flaps placed for engagement with an edge portion i.e. outwardly extending protrusions of openings (36) (column 3 lines 25-38). By doing so the locking engagement of the protrusions with the

upper rim portion of the bottom part takes place at flange like upper rim portion, more particularly at the outwardly extending retainment flaps (24a and e) (figure 1).

8. Claims 1 and 8 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Steffann (US 6,488,152) in view of Bessett (US 3,531,039) further in view of Macchi (US 3,550,836).

Regarding claim 1, Steffann discloses a package for receiving frangible products such as eggs, having a bottom part (2) with an upper rim portion extending outwards and non-planar side surfaces so as to match at least partially the outer contours of the products to be packed (figure 1). The package also has a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3). The bottom part (2) is connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3). The front surface (4) extends down from the edge (13) and overlaps the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its closed position (figures 1 and 3). When the package is in the closed position, the hinge (9) is positioned above the level of the upper rim portion of the bottom part (2) (figure 3).

Regarding claim 8, Steffann discloses a package provided with retainment means comprising one or more openings (14) in the front side (4) of the cover part (3) and co-operating retainment projections (15) on the side surface of the bottom part (2) opposite the hinge (9) (column 2 lines 45-48 and figure 2).

Steffann discloses all elements of the claimed invention except for at least one inwardly extending protrusion for locking engagement with the upper rim portion of the bottom part (2) when the package is closed.

Bessett teaches a package i.e. egg carton with a cover part provided with at least one inwardly extending protrusion (37) for locking engagement with upper rim portion (23) of the bottom part when the package is being closed (column 3 lines 29-38 and figure 1).

Macchi teaches providing double locking mechanisms in packages for firm locking (column 4 lines 4-16 and figure 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Steffann, Bessett and Macchi, to modify the package of Steffann to include the inwardly extending protrusions of Bessett because Macchi teaches providing double locking mechanisms to firmly lock the cover section in place and to overcome the slight moment of force being exerted not fully overcome by a single locking mechanism disclosed by Steffan.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kim Jacobs (US 4,742,953)

Roderick McKenna (US 3,570,747)

Charles Tange (US 4,240,575)

Alan Andrews (US 7,255,231)

Theodore Misdom (US 3,813,027)

E. M. Alman (US 3,217,963) all relate to packages for products such as egg.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLAINE G. NEWAY whose telephone number is (571)270-5275. The examiner can normally be reached on M-F 7:30 AM- 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Coby can be reached on 571 272 4017. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blaine G Neway/
Examiner, Art Unit 4138

2/14/2008
/Frantz Coby/
Supervisory Patent Examiner
Art Unit 4133

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